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Subject: STANDARD RULES OF PRACTICE AND PROCEDURE FOR INSPECTIONAL SERVICES DEPARTMENT HEARINGS

Purpose: This bulletin is issued to establish standard rules and procedures for all Inspectional Services Department Hearings conducted pursuant to the statutes, regulations and ordinances it is legally obligated to administer in the City of Boston.

Determination:

These standard rules of practice and procedure shall apply to all hearings conducted by the Inspectional Services Department under the various codes we are charged with enforcing. These rules are intended to establish procedural consistency for all hearings conducted by the department and to insure the fair and expedient adjudication of all matters brought before department hearing officers.

Note: For the purpose of clarity and brevity, the pronouns "He" and "His" are used editorially throughout this rule and it should be understood that where used they are to be interpreted as applying to both male and female employees.

A. STANDARD RULES OF PRACTICE AND PROCEDURE FOR THE CONDUCT OF INSPECTIONAL SERVICES DEPARTMENT HEARINGS

§ 1 General Considerations:

These rules establish uniform standards of general applicability for conducting department hearings. Accordingly, these rules establish general procedures for providing notice of hearings to parties; determining the order of proceedings; decorum in the hearing room; the introduction of evidence; settling of the hearing record; and, providing notice of the Hearing Officer's decision to the parties. These rules are intended to be a self-contained segrable body of regulations of general applicability to informal administrative hearings conducted by the

Inspectional Services Department in connection with its legal obligation to conduct such hearings pursuant to the statutes, regulations, ordinances and rules it is authorized by law to enforce in the City of Boston.

Where the procedures stated in these rules may conflict with procedures specified under a specific statute, regulation, ordinance or rule that the Inspectional Services Department is legally obligated to enforce, the requirements contained in such statute, regulation, ordinance or rule shall control and be followed by the Hearing Officer conducting the department hearing. In all other cases, the Hearing Officer shall follow the rules set forth in this bulletin.

§ 2 Notice of Department Hearings

When the department initiates a proceeding against a person or persons regarding a department action or intended action, the department shall provide the person or persons with written notice of the action or an order to show cause why the action should not be taken. The notice or order shall state the reason and statute(s) or regulations authorizing the action and include the date, time and place of the hearing, an explanation of the hearing procedure and an explanation of the party's right to have an authorized representative present.

In addition, all notices shall contain a notice printed in English, Spanish, Vietnamese and Chinese that informs the reader that this document is important and should be translated immediately.

§ 3 Emergency Scheduling

The department or the Hearing Officer, on its own or by request of a Party, may for good cause order an accelerated hearing, upon waiver of any written notice required by statute to the effected parties.

§ 4 Conduct of Hearings

All Hearings shall be informal and administrative. However, all Parties, their authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in Massachusetts administrative agency hearings.

§ 5 Duties of the Hearing Officer

The Hearing Officer shall conduct the hearing, administering an oath or affirmation to all witnesses, if any is required by law, and make all decisions on the admission or exclusion of evidence and resolve questions of procedure. The Hearing Officer shall file a decision or recommended decision, as the case may be, with the department within a reasonable time after the close of the hearing, but in any event no less than seven business days after the close of the hearing unless a greater or shorter period is required by law.

§ 6 Rights and Duties of Parties.

- (a) Each Party may present his or her own case, or may be assisted by an Authorized Representative at his or her expense. The Party, or authorized representative, shall have a right to:
- (1) present witnesses;
 - (2) present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
 - (3) advance any pertinent arguments without undue interference;
 - (4) question or refute any testimony including an opportunity to cross-examine adverse witnesses; and
 - (5) examine and introduce evidence from his or her records, and examine and introduce any other pertinent documents.

§ 7 Subpoenas

Where applicable statutes so provide, the Department or Hearing Officer may issue, vacate or modify subpoenas in accordance with the provisions of M.G.L. c. 30A, § 12.

§ 8 Administrative Notice

Where applicable statutes so provide or are silent, the Hearing Officer may take notice of fact(s), pursuant to the requirements of M.G.L. c. 30A, § 11(5).

§ 9 Record of Proceedings

(a) Contents of the Record

All documents and other evidence offered or taken shall become part of the record, which shall be the exclusive basis of the department's decision. The record shall include, but not be limited to, all tape recordings of department hearings, documents, photographs and other materials and evidence presented during the department hearing that formed the basis for the Hearing Officer's decision. The record shall be maintained in the Document Room in accordance with the Boston Archives and Records Management Division's Records Retention Schedule.

(b) Tape Recording

The Hearing Officer may elect to tape-record the proceeding to record its events in lieu of a verbatim transcript. Upon conclusion of all department hearings, Hearing Officers shall file the record of all decisions in the Document Room within five (5) business days. The Supervisor of the Document Room shall file the record of all decisions in the building jackets or in such other suitable index.

(c) Settling the Record

At the close of the department hearing, the Hearing Officer shall declare the record closed for the purposes of adjudicating the matter at hand and reaching a final decision on the merits.

(d) Evidence after Record Closed

No evidence shall be admitted after the close of the record unless the Hearing Officer reopens the record.

§ 10 Evidence

The Hearing Officer need not apply the rules of evidence observed by law. Evidence that reasonable persons are accustomed to rely on in the conduct of their affairs may be considered. Unduly repetitious evidence may be excluded.

§ 11 Order of Proceedings

a. Opening

In the usual case, in hearings resulting from orders to show cause, the division issuing the order shall open and first present evidence.

b. Order of Presentation

The Party taking the position contrary to that of the Party opening shall have the right to present his position upon completion of the opening Party's case.

c. Closing

The Party opening shall argue last in summation.

d. Discretion of the Hearing Officer

The Hearing Officer may, when the evidence is peculiarly within the knowledge of one Party, or when there are multiple parties, or when he or she otherwise determines appropriate, direct who shall open and may otherwise determine the order of presentation.

§ 12 Notice of Decision

The Hearing Officer shall promptly provide all Parties with a copy of every department decision or order when filed and otherwise give prompt notice of all department actions from which any time limitation commences.

§ 13 Miscellaneous Provisions Applicable to All Department Hearings

a. Applicability

The following provisions are applicable to all department hearings held pursuant to these Standard Rules Of Practice And Procedure For The Conduct Of Inspectional Services Department Hearings.

b. Amendments

The Commissioner of Inspectional Services may adopt any appropriate amendments and additions to Standard Rules Of Practice And Procedure For The Conduct Of Inspectional Services Department Hearings in accordance with M.G.L c. 30A, § 9. Any Division may apply to the Commissioner of Inspectional Services to make amendments to these rules.

c. Severability

If any rule contained herein is found to be unconstitutional or invalid by a Court of competent jurisdiction, the validity of the remaining rules will not be so affected.

d. Exemptions

Any Division wishing to be exempted from Standard Rules Of Practice And Procedure For The Conduct Of Inspectional Services Department Hearings shall apply for exemption to the Commissioner of Inspectional Services.

e. Conflicts

No Hearing Officer who has a direct or indirect interest, personal involvement or bias in a department hearing shall conduct a hearing or participate in decision-making for the relevant department hearing.

f. Ex Parte Communications

(A) General Provisions

1. Any member of the body comprising the department, Hearing Officer, or other department employee, who is or may reasonably be expected to be involved in the decisional process of the department hearing:
 - a. shall not make or receive an ex parte communication to or from any interested person outside the Department relevant to the merits of the Department hearing ; and
 - b. shall place on the public record of the Department hearing:
 - i. all prohibited written communications made or received;
 - ii. memoranda stating the substance of all prohibited oral communications made or received; and
 - iii. all written responses, and memoranda stating the substance of all oral responses, to the materials described in § 13(f) Ex Parte Communications(A) 1.b.i. and .ii.; and
 - iv. a statement whether, in his or her opinion, the receipt of the ex parte communication disqualifies him or her from further participation in the department hearing , pursuant to § 13(e) Conflicts.
2. The Hearing Officer may, upon the motion of any Party or on his or her own motion, accept or require the submission of additional evidence of the substance of a communication prohibited by § 13(f) Ex Parte Communications.
3. Upon receipt of a communication knowingly made or knowingly caused to be made by a Party in violation of § 13(f) Ex Parte Communications, the Hearing Officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the Party to show cause why his claim or interest in the Department hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

4. The prohibitions of § 13(f) Ex Parte Communications shall apply beginning at the time at which an Department hearing is initiated under these standard rules for department hearings unless the person responsible for the communication knows or reasonably should know that the Department hearing will be initiated, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such actual or constructive knowledge.
5. **Exception** § 13(f) Ex Parte Communications does not apply to consultation among Department members concerning the Department 's internal administrative functions or procedures.

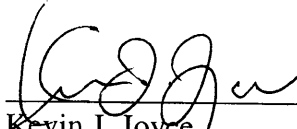
§ 14 Rules Effective Immediately

The rules and procedures contained in this bulletin shall take effect immediately.

§ 15 Rules Effective Until Amended, Altered or Revoked in Writing

The rules and procedures contained in this bulletin shall remain in effect until they are amended, altered or revoked in writing.

Signed:



Kevin J. Joyce
Commissioner of ISD